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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,205	07/22/2003	Jonathan D. Champlin	SOM919980002 US2	8628

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06/29/2005

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EXAMINER
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JEAN, FRANTZ B

ART UNIT	PAPER NUMBER
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2151

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/723,205

Applicant(s)

CHAMPLIN

Examiner

Frantz B. Jean

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5,6,12 and 21-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5,6,12 and 21-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This is a first office action in response to a divisional patent application filed on 7/22/03.

Claims 5, 6, 12 and 21-33 are presented for examination.

The preliminary amendment received on 7/22/03 has been entered in the file.

#### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 5, 6, 12 and 21-33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No.6,598,090. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application are broader than the claims of patent "090" and all the limitations of the instant application are included in US patent "090". Therefore, it is concluded that the claims of the present application are inherent over the claims of patent "090".

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 5-6, 12, 21, 24-26, 28-29 and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bakow et al. (hereinafter Bakow), U.S. patent no. 6,058,394 in view of Lister et al. ("Lister") patent No. 6,167,446.

3. As per claim 5, Bakow teaches a manager server selects agent server to execute query based on availability of the server connections to data source and target. Bakow's method and apparatus include a control facility for providing network administration for a network comprising at least one server location and a plurality of client locations associated with each of said at least one server, comprising: at least one processing component (server manager 106, clients 102 and end users 126, fig 1) for gathering (implicit in Bakow) stored software program information from the locations on the network; at least one storage component (databases 118, 120, 122 and 124 or control database 110, fig 1) associated with said at least one processing component for storing program information gathered from the locations; at least one communication component (server agents 112, 114 and 116, fig 1) for effecting communication from said at least one processing component along said network (col. 2, lines 1-34). However, Bakow does not explicitly detail on evaluating program information on networks locations. Lister is directed to an automatically configuring network-name-services, which include

evaluating and also gathering program information (see Lister col. 13 line 57 to col. 14 line 5). It must be noted that Lister also teaches preparing information (col. 13 lines 14-33). It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined Lister's evaluating information to Bakow's features because they would have contributed to and improved Bakow's network monitoring performance and efficiency.

4. As per claim 6, Bakow in combination with Lister teach a response generating component comprises at least means for identifying the network location from which said content was gathered (Bakow, col. 1, line 46 col. 2, line 34).

5. As per claim 21, Bakow in combination with Lister teach that said at least one processing component comprises a querying component for generating a query to at least one of said locations in said network and a receiving component for receiving and processing information gathered in response to said query and for generating at least one response based upon the content of said information (Bakow, col. 4, line 24-col. 5, line 17).

6. As per claim 12, Bakow teaches that a network comprising: at least one server network location; a plurality of client network locations, each associated with one of said at least one server locations; and an administrative control facility (col. 2, lines 1-34). However, Bakow does not explicitly detail on evaluating program information on networks locations. Lister is directed to an automatically configuring network-name-services, which include evaluating and also gathering program information (see Lister col. 13 line 57 to col. 14 line 5). It must be noted

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that Lister also teaches preparing information (col. 13 lines 14-33). It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined Lister's evaluating information to Bakow's features because they would have contributed to and improved Bakow's network monitoring performance and efficiency.

7. As per claim 24, Bakow in combination with Lister teach administrative control facility that is located at one of said at least one server network locations (Bakow, col. 2, lines 1-34).

8. As per claim 25, Bakow in combination with Lister teach administrative control facility that is located in a central control facility (col. 2, line 34 and col. 4, line 24).

9. As per claim 26, Bakow in combination with Lister teach that at least one of said at least one server network locations additionally comprises client information gathering means and at least one storage facility for storing information gathered by said client information gathering means (Bakow, col. 2, lines 56-67).

10. As per claim 28, Bakow teaches that the invention substantially as stated above including network locations; preparing a response based upon the content of said information (col. 4, line 24-col. 5, line 17). However, Bakow does not explicitly detail on evaluating program information on networks locations. Lister is directed to an automatically configuring network-name-services, which include evaluating and also gathering program information (see Lister col. 13 line 57 to col. 14 line 5). It must be noted that Lister also teaches preparing information (col.

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13 lines 14-33). It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined Lister's evaluating information to Bakow's features because they would have contributed to and improved Bakow's network monitoring performance and efficiency.

11. As per claim 29, Bakow in combination with Lister teach querying said locations for information (Bakow, col. 4, line 24-col. 5, line 17).

12. As per claim 31, Bakow in combination with Lister teach preparing a response that comprises flagging locations from which information is gathered (col. 4, line 24-col. 5, line 17).

13. As per claim 32, Bakow in combination with Lister teach identifying replaceable information at said locations (Bakow, col. 4, line 24-col. 5, line 17).

14. As per claim 33, Bakow in combination with Lister teach that network information is stored and wherein said identifying comprises comparing gathered information to stored information (Bakow, col. 1, line 46-col. 2, line 34).

15. Claims 22-23, 27 and 30 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Bakow et al. (hereinafter Bakow), U.S. patent no. 6,058,394 in view of Lister

et al. ("Lister") patent No. 6,167,446 and further in view of Savitzky et al (hereinafter Savitzky) U. S. patent no. 6,012,083.

16. As per claim 22, Bakow teaches that said at least one processing component comprises a receiving component for receiving and processing information generating a response based upon said information (col. 4, line 24-col. 5, line 17). Bakow and Lister teaches the invention substantially as claimed; however, neither Bakow nor disclose a scanner component for scanning at least one of said locations is being used in said network.

Savitzky discloses that a scanner component for scanning at least one location in a network (col. 6, lines 36-67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Bakow and Lister with Savitzky's for providing a system with a scanner component for scanning at least one location in a network because it would allow the user to produce an output which represents the original image.

17. As per claims 23 and 27, Bakow teaches that said at least one processing component comprises a querying component for generating a query to at least one of said locations in said network and a receiving component for receiving and processing information gathered by said processing component and for generating a response based upon the content of information gathered from at least one of said network locations (col. 1, line 46-col. 2, line 34 and col. 4, line 24-col. 5, line 17). Bakow and Lister teach the invention substantially as claimed;



however, neither Bakow nor Lister disclose a scanner component for scanning at least one of said locations is being used in said network.

Savitzky discloses that a scanner component for scanning at least one location in a network (col. 6, lines 36-67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Bakow and Lister with Savitzky's for providing a system with a scanner component for scanning at least one location in a network because it would allow the user to produce an output which represents the original image.

18. As per claim 30, Bakow teaches the invention substantially as claimed; however, Bakow and Lister do not disclose scanning said locations and obtaining said information without involvement of processing components at said locations.

Savitzky teaches scanning locations and obtaining information without involvement of processing components at said locations (col. 6, lines 36-67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Bakow and Lister with Savitzky's for providing a system to scan locations and obtain information without involvement of processing components because it would allow the system to maintain consistency throughout the network.

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Ainsbury et al. (6,078,924) is directed with a method and apparatus for performing data collection, interpretation and analysis, in an information platform which includes an information platform that automatically gathers information updates and stores them without client intervention -- data are always updated and historically tracked col. 3 line 65 to col. 4 line 64.**

**Griffin et al. (5,978,789) is directed to an efficient hypothetical query evaluation in a database system (see abstract).**

**Sharon et al. (6,205,122) and Fletcher et al. (6,269,401) also are concerned with the concept of gathering and evaluating of information.**

These references are cited because they recite certain features that are relevant to the claimed invention. Applicant is requested to consider these prior art references when responding to this office action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz B. Jean whose telephone number is 571-272-3937. The examiner can normally be reached on 8:30-6:00 M-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571 272 3939. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frantz Jean



**FRANTZ B. JEAN**  
**PRIMARY EXAMINER**